



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON MA 02210

COPY MAILED

FEB 28 2007

OFFICE OF PETITIONS

In re Application of :
Bernie Paul Pearce, et al. :
Application No.: 09/283,125 :
Filed: March 31, 1999 :
Attorney Docket No.: 112025-0116 :

ON PETITION

This is a decision on the petition, filed August 9, 2006, requesting withdrawal of the holding of abandonment in the above-identified application. The petition is being treated under 37 CFR 1.181 (no fee).

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the Office action of December 10, 2002, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on July 15, 2003. On August 9, 2006, the present petition was filed wherein petitioner asserts that a reply was timely filed on March 7, 2003. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on March 7, 2003 of an amendment and change of correspondence address. Petitioner explains that a petition requesting that the abandonment be withdrawn was filed on August 3, 2003; however, no decision was received. While petitioner renews his request under 37 CFR 1.181(a), a petition under 37 CFR 1.137(b) was also filed. A copy of the previously submitted reply accompanies the petition.

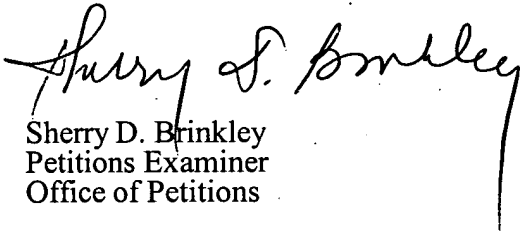
The papers acknowledged as having been received in the USPTO on March 7, 2003, are not of record in the application file and have not, to date, been located. However, MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the response was timely received in the USPTO but lost after receipt thereof.

In view of the above, the holding of abandonment is hereby withdrawn and the application is restored to pending status.

The copy of the reply supplied on August 9, 2006 with the petition will be accepted in place of the reply shown to have been received by the USPTO on March 7, 2003.

This application is being referred to Technology Center AU 2666 for appropriate action on the reply received with petition.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions